

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN MAURICE TENNIN,

Plaintiff,

v.

BLASE DEL, et al.,

Defendants.

No. C 11-4362 JSW (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, filed this rights action pursuant to 42 U.S.C. § 1983. He has been granted leave to proceed *in forma pauperis* in a separate order. The Court now reviews the complaint and dismisses with leave to amend.

DISCUSSION

I. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement

1 of the claim showing that the pleader is entitled to relief." "Specific facts are not
 2 necessary; the statement need only "give the defendant fair notice of what the claim
 3 is and the grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
 4 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
 5 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
 6 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
 7 recitation of the elements of a cause of action will not do. . . . Factual allegations must
 8 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
 9 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
 10 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
 11 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
 12 699 (9th Cir. 1990).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:

- 14 (1) that a right secured by the Constitution or laws of the United States was violated, and
 15 (2) that the alleged violation was committed by a person acting under the color of state
 16 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

17 II. Legal Claims

18 Plaintiff's complaint includes a variety of brief and conclusory allegations against
 19 a number of different prison officials. He alleges that 26 letter "went missing", that
 20 Defendant Officer Del "sexual[ly] threaten[ed]" him, that Defendant Officer Bohannon
 21 "physically assaulted" him, that Defendant Spalding did not help him, that Lieutenant
 22 Perry told him "to shup up I know nothing," that Defendant Rice told him to take a
 23 polygraph test, that Officer MacDonald threatened that other officer would beat him up,
 24 that Investigator Brown gave him an "item" for buying heroin, and that Warden Smith
 25 said that an investigation had been done.

26 The allegations of verbal threats and verbal harassment do not, alone, state a
 27 cognizable claim for relief. *See Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997)
 28 (allegations of mere threats also are not cognizable under § 1983); *Gaut v. Sunn*, 810

1 F.2d 923, 925 (9th Cir. 1987) (mere threat does not constitute constitutional wrong, nor
 2 do allegations that naked threat was for purpose of denying access to courts compel
 3 contrary result). Those claims will therefore be dismissed.

4 The remaining allegations are too vague and conclusory to state a cognizable
 5 claim. Federal Rule of Civil Procedure 8(a)(2) requires that the allegations "'give the
 6 defendant fair notice of what the . . . claim is and the grounds upon which it rests."
 7 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). "Conclusory allegations
 8 without more are insufficient." *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810
 9 (9th Cir. 1988). Plaintiff's allegations do not give the Defendants fair notice of the
 10 grounds upon which his claims rest. For example, Plaintiff alleges that Bohannan
 11 "assaulted" him, but he does not allege even the basic facts supporting this allegation,
 12 such as when, where or how the force was used, how much force was applied and
 13 whether there was any resistance. The claim about missing mail does not allege what the
 14 mail was, whether it was confidential, or who was responsible for losing it. Plaintiff will
 15 be given leave to amend his complaint to state claims, other than claims of mere verbal
 16 harassment or racial threat, to provide allege facts from which the Defendants will
 17 receive fair notice of the grounds upon which the claims rest.


18 CONCLUSION

19 1. The complaint is DISMISSED WITH LEAVE TO AMEND. Plaintiff shall
 20 file an amended complaint within *thirty (30) days from the date of this order* that cures
 21 the deficiencies noted above. The amendment must include the caption and civil case
 22 number used in this order and the words "COURT-ORDERED FIRST AMENDED
 23 COMPLAINT" and the case number for this case (No. C 11-4362 JSW (PR)) on the first
 24 page. Because an amended complaint completely replaces the original complaint, *see*
 25 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), Plaintiff may not incorporate
 26 material from the original or amended complaints by reference. Failure to amend within
 27 the designated time and in accordance with this order will result in the dismissal of this
 28 action.

1 2. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
2 Court informed of any change of address and must comply with the Court's orders in a
3 timely fashion. Failure to do so may result in the dismissal of this action under Federal
4 Rule of Civil Procedure 41(b).

5 IT IS SO ORDERED.

6 DATED: November 2, 2011

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8 _____
9 JEFFREY S. WHITE
10 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

TENNIN,

Plaintiff,

v.

DEL et al,

Defendant.

Case Number: CV11-04362 JSW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 2, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kevin M. Tennin
T29992
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

Dated: November 2, 2011



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk